

FILED
U.S. DISTRICT COURT
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

2020 FEB 24 PM 4:03

THOMAS HARE,
Plaintiff,

CLERK-LAS CRUCES

v.

Civil Action No. 19-cv-01091-GBW-GJF

BEN BAUR, CHIEF PUBLIC DEFENDER,
STATE OF NEW MEXICO LAW OFFICES
OF THE PUBLIC DEFENDER;
JENNIFER BIRMINGHAM, an individual;
JAMES WALKER, an individual; and
MICHELLE HALEY, an individual,

Defendants.

PLAINTIFF'S OBJECTIONS TO DEFENDANTS BEN BAUR, JENNIFER BIRMINGHAM, AND MICHELLE HALEY'S RESPONSE TO PLAINTIFF'S OBJECTION TO THE UNTIMELY ANSWER BY DEFENDANT BEN BAUR, CHIEF PUBLIC DEFENDER, STATE OF NEW MEXICO LAW OFFICES OF THE PUBLIC DEFENDER; DEFENDANT JENNIFER BIRMINGHAM, AN INDIVIDUAL; AND DEFENDANT MICHELLE HALEY, AN INDIVIDUAL ON THE BASIS OF EX PARTE COMMUNICATION WITH THE COURT AND MOTION TO STRIKE ALL PLEADINGS FILED BY DEFENDANTS

OBJECTIONS

Plaintiff pro se, Thomas Hare, files these objections to the Defendants response and all pleadings filed by Defendants in this case on the basis of *ex parte* communications with the court. As support for Plaintiff's objections, Plaintiff avers the following:

1. Plaintiff generally objects to all pleadings filed by Defendants in this case to date on the basis of *ex parte* communications.
2. Defendants "allegedly" filed a response on February 10, 2020 to Plaintiff's objection to the untimely answer "allegedly" filed by Defendants on December 26, 2019. Plaintiff refers to these pleadings as "allegedly" because Defendants

have not provided to Plaintiff, or caused to be provided to Plaintiff, any official pleading directly from the court with an official court stamp attached in the top right-hand corner of the pleading. Consequently, Plaintiff does not know if some of the Defendants' documents contain any materials or exhibits that Plaintiff is unaware of. Thus, Plaintiff objects to all pleadings filed by Defendants in this matter on the basis of *ex parte* communications with the court.

3. Plaintiff specifically objects to Defendants response "allegedly" filed on February 10, 2020 because it includes an Exhibit [Exhibit A] which was not provided to Plaintiff along with the "alleged" copy of Defendants response.
4. In the *Guide for Pro Se Litigants* issued by the U.S. District Court for the District of New Mexico in November 2019 and provided to Plaintiff at the inception of this litigation, the court defines *ex parte* communication as follows:

"Attorneys and pro se parties are prohibited from all *ex parte* communication with the judge or judge's staff. *Ex parte* communication occurs when one of the parties to a lawsuit exchanges information with the assigned judge (1) without opposing party being present, or (2) without knowledge and consent of the opposing party."
5. When the Defendants failed to provide Plaintiff with an official court-stamped copy of their pleadings and failed to provide Plaintiff with Exhibit A contained in the Defendants response, Defendants violated the court's rule against *ex parte* communications. To date, Defendants have not provided Plaintiff with a single pleading containing the official court stamp in the top right-hand corner.

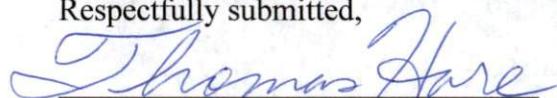
6. Plaintiff has provided Defendants with all of his pleadings in this case, each of which contains the official court stamp in the top right-hand corner of the pleading. Thus, Defendants are fully aware of all communications that Plaintiff has engaged in with the judge. However, Defendants have not done the same for Plaintiff in this matter, and Plaintiff is unfairly prejudiced by these illegal communications because Plaintiff does not know for certain what Defendants are communicating to the judge in this matter.

MOTION

7. Based on the foregoing provided herein at Paragraphs 1-6, *supra*, Plaintiff hereby generally objects to all pleadings filed by Defendants in this case on the basis of *ex parte* communications with the court, and specifically objects to Defendants response “allegedly” filed on February 10, 2020 because of Defendants failure to provide Plaintiff with a copy of Exhibit A, which was included as part of Defendants response.

8. Plaintiff moves the court to strike all pleadings Defendants have filed with the court in this case on the basis of *ex parte* communications. Given the nature of Plaintiff’s request to strike all pleadings filed by Defendants in this case, Plaintiff presumes Defendants opposition to this motion and so notes for the court.

Respectfully submitted,

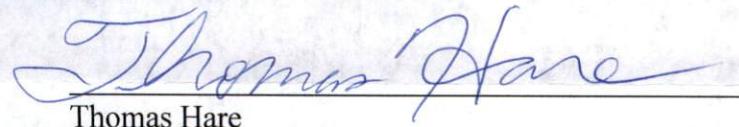


Thomas Hare
Plaintiff pro se
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CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of February 2020, I mailed a copy of this pleading to the Defendants' attorney of record, Michael Bebeau, by U.S. Postal Service first-class mail, postage prepaid, at the following address:

Michael Bebeau
Miller Stratvert, P.A.
P.O. Box 1986
Santa Fe, New Mexico 87504-1986


Thomas Hare

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Olean, NY 14760

BUFFALO NY 142

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UNITED STATES DISTRICT COURT
LAS CRUCES, NEW MEXICO



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MITCHELL H. ELLERS
CLERK OF COURT
LAS CRUCES CLERK'S OFFICE
U.S. Courthouse
100 North Church Street
Las Cruces, NM 88001

88001-357200

